IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 610 of 2005

WITH

CIVIL APPLICATION NO.706 of 2005

Maharashtra State Electricity Board .. Appellant

versus

Dhananjay D. Bhosale .. Respondent

...

Ms.A.R.S. Baxi for the appellant.

None for the respondent

CORAM : B.H. MARLAPALLE,J

DATED : 6th October 2005

P.C.:

1. Heard Ms.Baxi the learned counsel for the appellant Board.

2. This appeal arises from the order dated 2nd April 2005 passed by the learned Civil Judge, Sr.

Division at Pandharpur allowing the application for temporary injunction at Exhibit-5 filed in Special Civil Suit no.24 of 2005. The appellant Board was directed to restore the supply to the plaintiffs factory within 10 days subject to the plaintiff depositing 1/4th of the bill amount under protest within 7 days. Ms.Baxi states that as per her instructions, the order has been implemented by both the parties.

3. However, it is pointed out by Ms.Baxi that before the impugned order was passed on 2nd April 2005, the defendant Board filed an application at Exhibit-14 on or about 24th March 2005 before the trial Court praying for return of the plaint under Order VII Rule 11 of the Code of Civil Procedure. It has been contended in the said application that the suit was not maintainable before the Court below in view of the provisions of section 145, 154 and 154 of the Electricity Act 2003. As per Ms.Baxi without deciding the said application, the impugned order came to be passed by allowing the application at Exhibit-5 filed under Order XXXIX Rule 1 of the Code of Civil Procedure. She therefore prays for directions to the trial Court to hear and decide the

said preliminary issue raised by the Board vide the application at Exhibit-14. The Division Bench of this Court in the case of Mehersingh Vs. Deepak Sawhny reported in 1998 (3) Mh.L.J. 940, has held that an application raised the issue of jurisdiction of the trial Court must be heard and decided before the application filed for temporary injunction under Order XXXIX Rule 1, in view of the scheme of Section 9-A of the Code of Civil Procedure.

4. In case the application at Exhibit-14 is still pending before the trial court in Special civil suit no.24 of 2005, it is hereby directed that the said application be heard and decided as expeditiously as possible and in any case before 31st December 2005. This appeal is disposed of in terms of the above directions.

5. Writ to go to the trial court forthwith. Civil Application does not survive.

B.H. MARLAPALLE, J